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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 3, 2015

Jacques Jiha, Ph.D.
Commissioner
New York City Department of Finance
One Centre Street
New York, NY 10007

Re: Controls and Accountability of Court,
Trust and Bail Funds
Report 2015-F-16

Dear Mr. Jiha:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article 33 of the General Municipal Law, we have followed up on the actions taken by officials of the New York City Department of Finance to implement the recommendations contained in our prior audit report, *Controls and Accountability of Court, Trust and Bail Funds* (2013-N-1).

Background, Scope and Objective

Section 2601 of the Civil Practice Law and Rules requires that all moneys paid into the New York City courts be forwarded to the City's Department of Finance (Finance). These moneys include bail postings made on behalf of defendants, payments made pursuant to court orders, trust funds from estates controlled by Public Administrators (such estates have no known heirs or no heirs able or willing to administer the estates), and other miscellaneous funds. Payments made pursuant to court orders commonly involve landlord/tenant disputes and surplus moneys from foreclosures. These funds are held by the City in a trust account. The funds do not belong to the City, and they are not reported in the New York City Financial Statements as Agency funds.

Finance's Court Assets Unit is responsible for the moneys in its possession, including maintaining accurate account balances and investing the funds. According to Finance's records, as of June 30, 2015, Finance had a total ledger balance of \$280,282,161 in its computer system. A small portion of this balance is held in a common trust account for daily transactions, including refund checks; however, the majority these funds are invested by the City Comptroller in a common investment pool.

Finance receives these moneys from various City courts, New York City Public

Administrators, and the New York City Department of Correction (Bail funds). In accordance with Section 1504.3(c) (iii) of Chapter 58 of the New York City Charter, Finance must open and maintain separate ledger accounts whenever Court, Trust or Cash Bail funds are received, and keep an exact accounting of all funds. A ledger is a record for each Court, Trust and Cash Bail action showing deposits, withdrawals, additions of interest, and deductions of fees. The amount of fees that can be deducted is governed by various statutes.

Prior to August 2012, the Court Assets Unit operated the Bail Automated Receipt System (BARS) to account for Cash Bail funds, and the "HOD" system to account for Court and Trust assets. In August 2012, Finance integrated Court and Trust assets into BARS and renamed the system Court Assets Tracking System (CATS).

Our prior audit concluded that Finance's Court Assets Department could not accurately account for Court, Trust and Bail funds. We found discrepancies between the total account balances as shown on CATS and the balances held by the bank and investment firm. Finance stated the difference was due to Alternative to Incarceration (ATI) fees collected from bail cases. However, even after accounting for the ATI fees, there was a shortage of \$882,850 on deposit. Finance could not account for the shortage. Finance also could not demonstrate that it applied the full, correct amount of interest to the Court and Trust accounts.

We issued our initial audit report on April 16, 2014. The objective of our follow-up review was to assess the extent of implementation, as of October 14, 2015, of the eight recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found Finance officials have made progress in correcting the problems we identified. However, additional improvements are needed. Of the eight prior audit recommendations, six were implemented and two were partially implemented.

Follow-up Observations

Recommendation 1

Investigate the differences between CATS ledgers and the financial institution balances and make appropriate corrections. Maintain the documentation to support each error and the necessary corrections.

Status - Partially Implemented

Agency Action - Our review of the monthly bank reconciliations for the cash bail account from May 2014 through May 2015 determined that Finance identified the differences between its book balances and the bank's balance in the 13 months, but did not make the appropriate corrections. After our follow-up's closing conference on October 14, 2015, Finance officials indicated that they have taken corrective action.

Recommendation 2

Take appropriate action to determine the causes of unallocated interest and develop a plan to fully distribute interest to the accounts.

Status - Implemented

Agency Action - Finance had a plan to fully distribute interest to the Court and Trust accounts. Our review of a random sample of 50 Court and Trust accounts determined the interest was distributed to all accounts sampled in accordance with the plan.

Recommendation 3

Ensure compliance with New York State Civil Practice Law and Rules, section 8010(2) and that the Commissioner of Finance receives the correct fee and that Court and Trust accounts are properly credited for the interest earned from investments.

Status - Implemented

Agency Action - A review of a sample of 15 accounts found that Finance collected the correct fee and interest.

Recommendation 4

Prepare and maintain records that document that the correct amount was posted to each Court and Trust account.

Status - Implemented

Agency Action - We reviewed a sample of 30 Court and Trust accounts from Finance's May 2014 interest allocation report and determined that the correct amounts were allocated and posted.

Recommendation 5

Ensure that all bail cases are properly handled including but not limited to:

- *Timely abandonment of cases and all necessary fees have been withheld before forwarding to the Office of Unclaimed Funds, and*
- *Closing bail cases timely and ensuring that cases which are pending dormancy do not already have a court order issued.*

Status - Partially Implemented

Agency Action - We examined 14 bail cases pending abandonment. Our review determined that four of the cases were not properly handled. In two cases, Finance held cash bail with no

activity for more than three years; however, the accounts were not declared dormant. In the other two cases, Finance did not change the accounts' status to abandoned, although they had no activity for more than three years.

Recommendation 6

Review the five dormant bail cases in this report that were not handled properly (refunds to two open cases with court order and three cases that should not be dormant).

Status - Implemented

Agency Action - Finance processed the refund orders for the two open cases. The other three were reclassified as abandoned, and the funds were sent to the State Comptroller's Office of Unclaimed Funds.

Recommendation 7

Review the practice of withholding incarceration fees from forfeited bail, take action to correct the accounts and discontinue withholding incarceration fees from forfeited bail.

Status - Implemented

Agency Action - Finance provided a legal opinion that it can keep 3 percent from forfeited bail when the final outcome of the case is a guilty verdict or conviction. If the outcome is not guilty or exonerated, Finance can keep only 1 percent. Thus Finance will continue its practice regarding forfeited bail. We examined a random sample of ten cash bails to determine if the appropriate fee was withheld. In all ten cases, Finance deducted 3 percent based on court orders, which served as evidence of convictions.

Recommendation 8

Prepare and send the AC231 A&B to the State Comptroller each year, as required.

Status - Implemented

Agency Action - Finance prepared and forwarded the AC231 A&B for calendar years 2013 and 2014 to the State Comptroller, as required.

Major contributors to this report were Abe Fish, Christine Chu, and Orin Ninvalle.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Department of Finance for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Carmen Maldonado
Audit Director

cc: E. Kloss, Finance
C. Carino, Finance
G. Davis III, MOO